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By ... Stanley for ... Gen.
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Filed May 28, 1901.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

THE LAKE STREET ELEVATED RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE FARMERS LOAN AND TRUST COMPANY et al.,
Defendants in Error.

In Error to the Supreme Court of Illinois.

REPLY TO ADDITIONAL SUGGESTIONS FILED BY THE DEFENDANT IN ERROR ON MOTIONS TO DISMISS OR TO AFFIRM.

CLARENCE A. KNIGHT,
Attorney for Plaintiff in Error.

Rose & Stanley, Printers, 87 Dearborn St., Chicago.

IN THE

Supreme Court of the United States

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REPLY TO ADDITIONAL SUGGESTIONS FILED BY THE DEFENDANT IN ERROR ON MOTIONS TO DISMISS OR TO AFFIRM.

We have this morning received from counsel for the defendant in error a copy of his additional suggestions upon the motions made by him to dismiss the writ of error or to affirm the judgment of the Supreme Court of Illinois.

It appears that counsel makes objection to the filing of the transcript sent by the clerk of the Supreme Court of Illinois to the clerk of this court, in obedience to the writ of error issued herein. The idea seems to prevail in counsel's mind that this record has been filed and the case

docketed in this court to carry out some ulterior purpose on our part. The facts in relation to the filing of this transcript are as follows:

On May 11th last we mailed to the clerk of this court our appearance for the plaintiff in error in this case and a motion to extend the time to file a brief in opposition to the motion made by the defendant in error to dismiss or to affirm, a copy of which letter is as follows:

"CHICAGO, May 11, 1901.

James H. McKenney, Esq., Clerk of the Supreme Court, Washington, D. C.:

DEAR SIR—I hand you herewith my appearance as counsel for the plaintiff in error in the case of *The Lake Street Elevated Railroad Company, plaintiff in error,* v. *The Farmers' Loan and Trust Company, The American Trust and Savings Bank and The Northern Trust Company, defendants in error.*

The necessity of sending this appearance to you at the present time arises by reason of the following facts: On the 23rd day of April last Justice Brown allowed a writ of error in the above entitled cause, and on the same day the same issued out of your office, together with a citation to the Supreme Court of Illinois. The clerk of the state court was directed to transmit the record within thirty days. On the 4th day of May counsel for the Farmers' Loan and Trust Company served notice upon me that on the 13th day of May they would move the court to dismiss the writ of error or to affirm the judgment. I was given only nine days' notice of this motion, although, under the rules, I am entitled to three weeks' notice. I requested counsel to stipulate for a few days' additional time within which I might prepare and file a brief, but they decline to do so unless I will agree to submit the motion at this time. This I do not care to do. The record has not yet been sent, but will be sent before the thirty days have expired.

I have prepared and hand you herewith a motion, together with proof of service of same, which I would like to have you present to the court at the time Mr. Burry makes his motion on May 13th to dismiss the writ of error,

granting me the time allowed by the rules to present and file my brief in opposition to his motion. This motion, I presume, will be granted as a matter of course.

I also enclose a check for $25.00, the deposit usually required from plaintiffs in error.

I would like to have you let me know at once whether it is necessary to send with the record a bond for costs, and if so will you kindly send me a blank form of the bond required.

Yours very truly,

CLARENCE A. KNIGHT.

Under date of May 15 last the clerk of the Supreme Court advised us that this letter and the enclosures were not received by him until May 14, and that he held the motion and other papers for further direction, which said letter is as follows:

"WASHINGTON, D. C., May 15, 1901.

Clarence A. Knight, Esq., Chicago, Ill.:

DEAR SIR—Yours of the 11th inst. enclosing appearance for plaintiff in error, check for $25.00, motion to extend time to file briefs, and notice of same, in case of *Lake St. Ele. R. R. Co.* v. *Farmers' Loan & Trust Co. et al.*, were received late yesterday afternoon. On Monday, the 13th inst., Mr. Burry filed and docketed on the part of defendants in error a transcript of record in this case, which is No. 669 for Oct. Term, 1900, and submitted motions to vacate the supersedeas or dismiss or affirm therein, and leave was given counsel for plaintiff in error to file briefs in opposition to said motions within 5 days. As already stated, at that time your papers had not been received and consequently your motion for extension of time to file briefs could not be submitted to the court, the time given you to file briefs having been asked for by Mr. Burry in your behalf. I, therefore, hold your motion and the other papers for your further direction.

Yours truly,

JAMES H. MCKENNEY,
Clerk, Supreme Ct., U. S.,
Per W. R. S."

On the 17th of May, in answer to the above letter, we

requested the clerk to hold the appearance and to file the same when the transcript should be sent on, which said letter is as follows:

"CHICAGO, May 17, 1901.

J. H. McKenney, Esq., Clerk of the Supreme Court, Washington, D. C.:

DEAR SIR—Your letter of the 15th inst., advising me that my letter of the 11th inst., enclosing appearance and motion to extend time to file briefs, etc., in *Lake Street Elevated Railroad Company* v. *Farmers' Loan and Trust Company*, is at hand. I do not understand why the motion was not received in time for presenting the same to the court at the time Mr. Burry presented his motion. The letter was mailed here the morning of Saturday and it seems to me it should have reached Washington in time for court on Monday. I presume nothing can be done with the motion as I have sent my brief. Please hold the appearance and appearance fee, $25.00, and file the same when the transcript is sent, which will be within a day or two.

Yours very truly,

CLARENCE A. KNIGHT."

On the 20th of May we received word from the clerk acknowledging ours of the 17th and advising us that the transcript had been that day received by him and that he had, as requested, docketed the case as No. 687 for the October term, which said letter is as follows:

"WASHINTON, D. C., May 20, 1901.

Clarence A. Knight, Esq., Chicago, Ill.:

DEAR SIR—Yours of the 17th inst. received. Transcript of record in case of *Lake St. Ele. R. R. Co.* v. *Farmers' L. & T. Co.* was also received to-day, and I have as requested docketed the case No. 687, for Oct. Term, 1900.

I enclose receipt for amount of deposit.

Yours truly,

JAS. H. MCKENNEY,
Clerk Supreme Ct. U. S.
Per H. C. M.

This is all that passed between us and the clerk regarding

this case, with the exception of a letter on May 16th advising him that we had expressed twenty-five copies of our brief in opposition to the motions of the defendant in error, and requesting him to see that they were placed in the hands of the court, and a letter from the clerk acknowledging receipt of our letter, and advising us that the briefs had been received.

It will be seen that there has been no effort on our part to embarrass the defendant in error in any way whatever. If he has been embarrassed in any way it is owing to his own action in prematurely making his motion to dismiss the writ of error or to affirm the judgment, for which we are not responsible. We assume the clerk in filing the transcript understands the duties of his office, and it will not be necessary to notice counsel's insinuations.

Regarding counsel's suggestions that the case in which the transcript sent by the clerk of the Supreme Court of Illinois has been docketed should be dismissed, we certainly object to that, and we know of no reason why the two cases should be consolidated.

If the motion to dismiss or to affirm is denied, or reserved to the hearing that disposes of the case docketed by the defendant in error. If such an order shall be entered we have no objection to a like order being entered in the case docketed by the plaintiff in error. If any other order than that is entered in the case docketed by the defendant in error, we have no objection to a like order being entered in the case docketed by the plaintiff in error, provided we are not prejudiced by the fact that the transcript filed by the defendant in error is incomplete and such order is not the result of that fact.

Respectfully submitted.

CLARENCE A. KNIGHT,
Attorney for Plaintiff in Error.